

IC 8-15.7-4

Chapter 4. Procurement Process

IC 8-15.7-4-1

Request for proposals; preliminary feasibility study; public hearing

Sec. 1. (a) The department may request proposals from private entities for all or part of the development, financing, and operation of one (1) or more projects.

(b) If all or part of the project will consist of a tollway, the department shall take the following steps before the commencement of the procurement process under this chapter:

(1) The department shall cause to be prepared a preliminary feasibility study on that part of the project consisting of a tollway by a firm or firms internationally recognized in the preparation of studies or reports on the financial feasibility of proposed toll road projects. The preliminary feasibility study must be based upon a public-private financial and project delivery structure.

(2) After the completion of the preliminary feasibility study, the department shall schedule a public hearing on the proposed project and the preliminary feasibility study and publish notice of the hearing one (1) time in accordance with IC 5-3-1 at least seven (7) days before the hearing. The notice must include the following:

(A) The date, time, and place of the hearing.

(B) The subject matter of the hearing.

(C) A description of the proposed project, its location, the part of the project consisting of a tollway, and, consistent with the assessments reached in the preliminary feasibility study, the estimated total cost of the acquisition, construction, installation, equipping, and improving of the proposed project, as well as the part of the project consisting of a tollway.

(D) The address and telephone number of the department.

(3) At the hearing, the department shall allow the public to be heard on the proposed project and the preliminary feasibility study.

(4) After the public hearing described in subdivision (2), the department shall submit the preliminary feasibility study to the budget committee for its review before the commencement of the procurement process under this chapter.

As added by P.L.47-2006, SEC.40.

IC 8-15.7-4-2

Competitive proposal procedure; request for qualifications; contents of request for proposals; public hearing

Sec. 2. (a) This section establishes the competitive proposal procedure that the department shall use to enter into a public-private agreement with an operator under this article.

(b) The department may pursue a competitive proposal procedure using a request for qualifications and a request for proposals process or proceed directly to a request for proposals.

(c) If the department elects to use a request for qualifications phase, it must provide a public notice of the request for qualifications, for the period considered appropriate by the department, before the date set for receipt of submittals in response to the solicitation. The department shall provide the notice by posting in a designated public area and publication in a newspaper of general circulation, in the manner provided by IC 5-3-1. In addition, submittals in response to the solicitation may be solicited directly from potential offerors.

(d) The department shall evaluate qualification submittals based on the requirements and evaluation criteria set forth in the request for qualifications.

(e) If the department has undertaken a request for qualifications phase resulting in one (1) or more prequalified or shortlisted offerors, the request for proposals shall be limited to those offerors that have been prequalified or shortlisted.

(f) If the department has not issued a request for qualifications and intends to use only a one (1) phase request for proposals procurement, the department must provide a public notice of the request for proposals for the period considered appropriate by the department, before the date set for receipt of proposals. The department shall provide the notice by posting in a designated public area and publication in a newspaper of general circulation, in the manner provided by IC 5-3-1. In addition, proposals may be solicited directly from potential offerors.

(g) The department shall submit a draft of the request for proposals to the budget committee for its review before the issuance by the department of the request for proposals to potential offerors. The request for proposals must:

- (1) indicate in general terms the scope of work, goods, and services sought to be procured;
- (2) contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement and the qualifying project;
- (3) specify the factors, criteria, and other information that will be used in evaluating the proposals;
- (4) specify any requirements or goals for use of:
 - (A) minority business enterprises and women's business enterprises certified under IC 4-13-16.5;
 - (B) disadvantaged business enterprises under federal or state law;
 - (C) businesses defined under IC 5-22-15-20.5 as Indiana businesses, to the extent permitted by applicable federal and state law and regulations; and
 - (D) businesses that qualify for a small business set-aside under IC 4-13.6-2-11;
- (5) if all or part of the project will consist of a tollway, require

any offeror to submit a proposal based upon that part of the project that will consist of a tollway, as set forth in the request for proposals, and permit any offeror to submit one (1) or more alternative proposals based upon the assumption that a different part or none of the project will consist of a tollway;

(6) contain or incorporate by reference the other applicable contractual terms and conditions; and

(7) contain or incorporate by reference any other provisions, materials, or documents that the department considers appropriate.

(h) The department shall determine the evaluation criteria that are appropriate for each project and shall set those criteria forth in the request for proposals. The department may use a selection process that results in selection of the proposal offering the best value to the public, a selection process that results in selection of the proposal offering the lowest price or cost or the highest payment to, or revenue sharing with, the department, or any other selection process that the department determines is in the best interests of the state and the public.

(i) The department shall evaluate proposals based on the requirements and evaluation criteria set forth in the request for proposals.

(j) The department may select one (1) or more offerors for negotiations based on the evaluation criteria set forth in the request for proposals. If the department believes that negotiations with the selected offeror or offerors are not likely to result in a public-private agreement, or, in the case of a best value selection process, no longer reflect the best value to the state and the public, the department may commence negotiations with other responsive offerors, if any, and may suspend, terminate, or continue negotiations with the original offeror or offerors. If negotiations are unsuccessful, the department shall terminate the procurement, may not award the public-private agreement, and may commence a new procurement for a public-private agreement. If the department determines that negotiations with an offeror have been successfully completed, the department shall, subject to the other requirements of this article, award the public-private agreement to the offeror.

(k) Before awarding a public-private agreement to an operator, the department shall schedule a public hearing on the proposed public-private agreement and publish notice of the hearing one (1) time in accordance with IC 5-3-1 at least seven (7) days before the hearing. The notice must include the following:

(1) The date, time, and place of the hearing.

(2) The subject matter of the hearing.

(3) A description of the agreement to be awarded.

(4) The recommendation that has been made to award the agreement to an identified offeror or offerors.

(5) The address and telephone number of the department.

(l) At the hearing, the department shall allow the public to be heard on the proposed public-private agreement.

(m) When the terms and conditions of multiple awards are specified in the request for proposals, awards may be made to more than one (1) offeror.

As added by P.L.47-2006, SEC.40.

IC 8-15.7-4-3

Designation of operator; publication of notice; execution of public-private agreement; action to contest validity

Sec. 3. (a) After the procedures required in this chapter have been completed, the department shall make a determination as to whether the successful offeror should be designated as the operator for the project and shall submit its decision to the governor and the budget committee.

(b) After review of the department's determination by the budget committee, the governor may accept or reject the determination of the department. If the governor accepts the determination of the department, the governor shall designate the successful offeror as the operator for the project. The department shall publish notice of the designation of the operator one (1) time, in accordance with IC 5-3-1.

(c) After the designation of the successful offeror as the operator for the project, the department may execute the public-private agreement.

(d) An action to contest the validity of a public-private agreement entered into under this chapter may not be brought after the fifteenth day following the publication of the notice of the designation of the operator under the public-private agreement under subsection (b).

As added by P.L.47-2006, SEC.40.

IC 8-15.7-4-4

Use of work product from unsuccessful proposal

Sec. 4. The department may pay a stipulated amount to an unsuccessful offeror that submits a responsive proposal in response to a request for proposals under this chapter, in exchange for the work product contained in that proposal. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section.

After payment of the stipulated amount:

(1) the department and the unsuccessful offeror jointly own the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the proposal, project design, and project financial plan; and

(2) the use by the unsuccessful offeror of any part of the work product contained in the proposal is at the sole risk of the unsuccessful offeror and does not confer liability on the department.

As added by P.L.47-2006, SEC.40.

IC 8-15.7-4-5

Power to withdraw or modify request, seek revised proposals, or decline to award a public-private agreement

Sec. 5. In addition to any other rights under this article, in connection with any procurement under this chapter, the department may:

- (1) withdraw a request for qualifications or a request for proposals at any time and, in its discretion, publish a new request for qualifications or request for proposals;
- (2) decline to award a public-private agreement for any reason;
- (3) request clarifications to any qualification submittal or request for proposals or seek one (1) or more revised proposals or one (1) or more best and final offers;
- (4) modify the terms, provisions, and conditions of a request for qualification, request for proposals, technical specifications, or form of public-private agreement during the pendency of a procurement; and
- (5) interview offerors.

As added by P.L.47-2006, SEC.40.

IC 8-15.7-4-6

Disclosure of contents of proposals

Sec. 6. (a) The department may not disclose the contents of proposals during discussions or negotiations with potential offerors.

(b) The department may, in its discretion in accordance with IC 5-14-3, treat as confidential all records relating to discussions or negotiations between the department and potential offerors if those records are created while discussions or negotiations are in progress.

(c) Notwithstanding subsections (a) and (b), and with the exception of portions that are confidential under IC 5-14-3, the terms of the selected offer negotiated under this article shall be available for inspection and copying under IC 5-14-3 after negotiations with the offerors have been completed.

(d) When disclosing the terms of the selected offer under subsection (c), the department shall certify that the information being disclosed accurately and completely represents the terms of the selected offer.

(e) The department shall disclose the contents of all proposals, except the parts of the proposals that may be treated as confidential in accordance with IC 5-14-3, when either:

- (1) the request for proposal process is terminated under section 5 of this chapter; or
- (2) the public-private agreement has been executed and the closing for each financing transaction required to provide funding to carry out the agreement has been conducted.

As added by P.L.47-2006, SEC.40.